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10/799,947

03/12/2004

Gary Dean LaVon

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27752 7590 07/20/2007

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EXAMINER

HAND. MELANIE JO

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

07/20/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/799,947

Applicant(s)

LAVON ET AL.

Examiner

Melanie J. Hand

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 4/16/07.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

### ***Allowable Subject Matter***

The indicated allowability of claims 1-15 and 20 is withdrawn in view of the newly discovered reference(s) to Pargass, Buell, Roe, Pozniak and LeMinh. Rejections based on the newly cited reference(s) follow.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on April 16, 2007 was filed after the mailing date of the non-final action on April 11, 2007. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-5, 8-15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pargass (WO 99/13813 A1) in view of Buell (U.S. Patent No. 4,704,115).

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With respect to **claim 1**: Pargass teaches a disposable diaper 10 having a front waist region 14, a back waist region 12, and a crotch region 17 between the waist regions and comprising: an absorbent assembly (collectively 29,30,112) having an interior surface and an exterior surface and laterally opposing longitudinally extending breathable side flaps 32, each side flap 32 having longitudinally opposing ends and a longitudinally extending proximal edge as such edge is defined in the disclosure of the instant application, each side flap 32 being attached adjacent to its ends to the interior surface of the absorbent assembly defined by the interior surface of topsheet 30 (Fig. 7) and having a longitudinally extending elastic gathering member 38 attached adjacent to its proximal edge such that when allowed to relax, the elastic gathering member 38 contracts and lifts the proximal edge away from the interior surface of the absorbent assembly (Figs. 1,2), thereby raising the side flap 32 to form a breathable side barrier (Page 6, lines 20-28, Page 9, lines 24,25, Page 11, lines 16,17, Page 12, lines 4-12); and a chassis attached to the exterior surface of the absorbent assembly and having an interior surface and an exterior surface and including a water-impermeable backsheet 26, wherein at least a portion of the chassis is extensible inasmuch as the backsheet is comprised of polyethylene, a thermoplastic elastomeric material (Page 8, lines 18-20).

Pargass does not teach that laterally opposing portions of the chassis in the crotch region 17 are folded laterally inward to overlap the respective side flaps and are attached to the respective side flaps. Buell teaches an absorbent article having a chassis including backsheet 41 wherein portions of the chassis in the crotch region are folded inwardly to overlap upstanding leak preventing gutters 45,46 (the gutters are considered herein to define side flaps) and are attached thereto in bond areas 76 ('115, Fig. 1, Col. 3, lines 57-59, Col. 5, lines 8-17, 53-55). Buell teaches that such a configuration prevents inversion of the gutters during wear, thus negating their function, therefore it would be obvious to one of ordinary skill in the art to modify

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the article of Pargass so as to have laterally opposing portions of the chassis in the crotch region 17 folded laterally inward to overlap the respective side flaps and attached to the respective side flaps as taught by Buell to prevent inversion of the side flaps during wear that would negate their function of leakage prevention.

With respect to **claim 3**: The extensible portion of the chassis taught by Pargass is the entire area of backsheet 26, which includes a portion that underlies the absorbent assembly in one of the waist regions and the portion is laterally extensible.

With respect to **claim 4**: The extensible portion of the chassis taught by Pargass is the entire area of backsheet 26, which includes one of the waist regions, and the extensible portion is necessarily laterally extensible to a greater degree than at least a portion of the chassis in the crotch region due to bonds present in the crotch region (i.e. those attaching film 112 to backsheet 26) that are not present in the waist region, wherein bonds by their nature limit the degree of extensibility.

With respect to **claim 5**: The laterally opposing laterally inwardly folded portions of the chassis of the combined teaching of Pargass and Buell overlap equally laterally inward and thus do not overlap the respective side flaps less far laterally inward than the respective proximal edges of the respective side flaps and thereby leave uncovered respective exposed portions of the respective side flaps adjacent to the proximal edges. However, applicant has not established criticality for this limitation. The extent to which the chassis overlaps the side flaps is a result effective variable inasmuch as Buell teaches that the backsheet 41 is attached to the side flap and both are in turn attached to the inner surface of the diaper to form gutters that provide

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leakage protection, which are formed by the inward turn of the side flaps. If there are exposed regions of the side flaps, then the function of leakage protection is realized to a lesser degree depending upon the amount of side flap area exposed. Thus it would be obvious to one of ordinary skill in the art to modify the article of the combined teaching of Pargass and Buell so as to have laterally opposing laterally inwardly folded portions of the chassis that overlap the respective side flaps less far laterally inward than the respective proximal edges of the respective side flaps and thereby leave uncovered respective exposed portions of the respective side flaps adjacent to the proximal edges with a reasonable expectation of success.

With respect to **claim 8**: As can be seen from Fig. 3 of Pargass, the absorbent assembly (collectively items 28,29,30) has a length smaller than a length of the chassis that includes backsheet 26.

With respect to **claim 9**: The absorbent assembly taught by Pargass includes an absorbent core 28 and a water-impermeable lower covering sheet 112 disposed exteriorly of the absorbent core 28.

With respect to **claim 10**: The absorbent assembly also includes a water-impermeable bottom sheet disposed between the lower covering sheet 112 and the absorbent core 28.

With respect to **claim 11**: The absorbent assembly of Pargass includes an absorbent core storage component 29 in the form of a transfer layer, whose function is to both acquire and transfer fluid, thus said layer is considered herein to function as a storage component.

With respect to **claim 12**: The absorbent core storage component 29 contains no airfelt. (Page 9, lines 19-21)

With respect to **claim 13**: The absorbent assembly of Pargass includes an absorbent core acquisition component 30.

With respect to **claim 14**: As can be seen in Figs. 3,4 of Pargass, the absorbent core acquisition component 30 is equal in length to said absorbent core 28 and thus the combined teaching of Pargass and Buell does not teach an acquisition component that is smaller than a length of the absorbent core storage component and is disposed longitudinally offset from the absorbent core storage component. However, since the acquisition component 30 taught by Pargass absorbs and transfers exudates, its effectiveness is dictated by both its area and placement. Pargass teaches a component 30 that is placed substantially entirely within the central region 16 of the diaper 10, which is smaller than another embodiment in which component 30 extends the length of the article, therefore Pargass is teaching decreasing the length of said acquisition component 30. It would therefore be obvious to one of ordinary skill in the art to modify the article of Pargass to further decrease the length of the acquisition component 30 such that the length is smaller than a length of the absorbent core storage component 29 with a reasonable expectation of success. The resulting smaller-length acquisition component 30 is necessarily longitudinally offset from the storage component by virtue of being shorter than said storage component. Discovery of optimum value of result effective variable in known process is ordinarily within skill of art. *In re Boesch and Slaney*, 205 USPQ 215 (C.C.P.A. 1980) ('813, Page 9, lines 24-27, Page 10, lines 4-6)

With respect to **claim 15**: The chassis taught by Pargass includes at least one fastening element in the form of adhesive areas to create seams 20,21, adapted for fastening the front waist region and the back waist region together to encircle a waist and legs of a wearer.

With respect to **claim 20**: Pargass teaches a disposable diaper having a front waist region 14, a back waist region 12, and a crotch region 17 between the waist regions and comprising: an absorbent assembly (collectively 29,30,112) having an interior surface and an exterior surface and laterally opposing longitudinally extending breathable side flaps 32, each side flap 32 having longitudinally opposing ends and a longitudinally extending proximal edge; each side flap 32 having a longitudinally extending elastic gathering member 38 attached adjacent to its proximal edge such that when allowed to relax, the elastic gathering member contracts and lifts the proximal edge away from the interior surface of the absorbent assembly, thereby raising the side flap to form a breathable side barrier; and a chassis attached to the exterior surface of the absorbent assembly and having an interior surface and an exterior surface and including a water-impermeable backsheet 26; absorbent core storage component 29 contains no airfelt.

Pargass does not teach that laterally opposing portions of the chassis in the crotch region 17 are folded laterally inward to overlap the respective side flaps and are attached to the respective side flaps. Buell teaches an absorbent article having a chassis including backsheet 41 wherein portions of the chassis in the crotch region are folded inwardly to overlap upstanding leak preventing gutters 45,46 (the gutters are considered herein to define side flaps) and are attached thereto in bond areas 76 ('115, Fig. 1, Col. 3, lines 57-59, Col. 5, lines 8-17, 53-55). Buell teaches that such a configuration prevents inversion of the gutters during wear, thus negating their function, therefore it would be obvious to one of ordinary skill in the art to modify



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the article of Pargass so as to have laterally opposing portions of the chassis in the crotch region 17 folded laterally inward to overlap the respective side flaps and attached to the respective side flaps as taught by Buell to prevent inversion of the side flaps during wear that would negate their function of leakage prevention.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pargass (WO 99/13813 A1) in view of Buell (U.S. Patent No. 4,704,115) as applied to claims 1, 3-5, 7-15 and 20 above, and further in view of Roe et al (U.S. Patent Application Publication No. 2002/0128617).

With respect to **claim 2**: The combined teaching of Pargass and Buell does not teach that the extensible portion of the chassis includes at least two distinct laterally extending embossed regions according to claim 2.

Roe teaches an absorbent article 10 comprising an extensible chassis (via extensible backsheet 26) that includes at least two distinct laterally extending embossed regions, each containing a pattern of generally longitudinally oriented alternating ridges and valleys created by an embossment and also containing an unembossed region located between the embossed regions. The limitation "such that the portion of the chassis can be laterally extended to a given extent with the application of relatively less force than that required to laterally extend the same portion of the chassis to the same given extent before the embossment" is considered herein to constitute functional language that is given little patentable weight. Roe teaches that the embossed regions impart a resistive force upon application of an elongating force to ensure proper fit, therefore it would be obvious to one of ordinary skill in the art to modify the article of the combined teaching of Pargass and Buell such that the extensible portion of the chassis

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contains embossed regions in the manner claimed and taught by Roe to ensure proper fit of the article. ('617, Figs. 5,5A, ¶0084)

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pargass (WO 99/13813 A1) in view of Buell (U.S. Patent No. 4,704,115) as applied to claims 1, 3-5, 8-15 and 20 above, and further in view of LeMinh (U.S. Patent No. 7,160,281).

With respect to **claim 6**: The combined teaching of Pargass and LeMinh does not teach that the absorbent assembly is attached to the chassis in a cruciform pattern of attachment. LeMinh teaches an absorbent article in which the absorbent assembly is attached to an elastically extensible sheet. LeMinh teaches that such pattern of attachment prevents distortion of the absorbent assembly upon stretching of the elastically extensible layer during use, therefore it would be obvious to one of ordinary skill in the art to modify the article of the combined teaching of Pargass and Buell by attaching the absorbent assembly to the chassis in a cruciform pattern of attachment as taught by LeMinh to prevent distortion of the absorbent assembly. ('281, Col. 1, lines 39-44)

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pargass ('813) in view of Buell ('115) as applied to claims 1, 3-5, 8-15 and 20 above, and further in view of Pozniak et al (U.S. Patent No. 6,972,012)

With respect to **claim 7**: The combined teaching of Pargass and Buell does not teach cohesive fastening elements disposed on both an interior surface of the disposable diaper and an exterior surface of the disposable diaper such that the front waist region may be fastened over the back

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waist region or the back waist region may alternatively be fastened over the front waist region to encircle a waist and a leg of a wearer. Pozniak teaches a pant-type absorbent garment and teaches that either an interior-to-interior configuration (such as that taught by Pargass) or an interior-to-exterior configuration may be used. ('012, Col. 10, lines 47-53, Col. 12, line 58 – Col. 13, line 7) Thus since both devices seek to solve a similar problem in the art, and Pozniak teaches that the configurations are equivalent, it would be obvious to one of ordinary skill in the art to modify the device of the combined teaching of Pargass and Buell so as to have cohesive fastening elements disposed on both an interior surface of the disposable diaper and an exterior surface of the disposable diaper as taught by Pozniak with a reasonable expectation of success.

### ***Conclusion***

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on April 16, 2007 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand  
Examiner  
Art Unit 3761

July 9, 2007

**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**



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